

PT 97-48

Tax Type: PROPERTY TAX

Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

KMG CULTURAL)	
DANCE PROGRAM)	Docket No: 93-16-713
APPLICANT)	
)	
v.)	Real Estate Exemption
)	for Part of 1993 Tax Year
)	
DEPARTMENT OF REVENUE)	P.I.N.S: 21-31-420-006
STATE OF ILLINOIS)	21-31-420-007
)	
)	
)	Alan I. Marcus,
)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This proceeding raises three issues: first, whether real estate identified by Cook County Parcel Index Numbers 21-31-420-006 and 21-31-420-007 (hereinafter the "subject parcel" or the "subject property") was owned by the KMG Cultural Dance Program (hereinafter "KMG" or the "applicant") during any part of the 1993 assessment year; second, whether KMG qualifies as an "institution of public charity" within the meaning of 35 ILCS 205/19.7;¹ and third, whether the subject parcel satisfies the ownership and use requirements set forth in Section 205/19.7. In relevant part, that provision exempts the following from real estate taxation:

All property of institutions of public charity, all
property of beneficent and charitable organizations,

¹. In People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption will depend on the statutory provisions in force at the time for which the exemption is claimed. This applicant seeks exemption from 1993 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Revenue Act of 1939 (35 ILCS 205/1 et seq).

whether incorporated in this or any other state of the United States ... when such property is actually and exclusively used for such charitable or beneficent purposes and not leased or otherwise used with a view to profit ...[.]

The controversy arises as follows:

On January 6, 1994, KMG filed a Real Estate Exemption Complaint with the Cook County Board of (Tax) Appeals (hereinafter the "Board"). Said complaint alleged that the subject property was exempt from real estate taxation under the then-existing version of Section 205/19.7. (Dept Group Ex. No. 1, Document A).²

The Board reviewed applicant's complaint and recommended to the Illinois Department of Revenue (hereinafter the "Department") that the requested exemption be denied. Dept. Group Ex. No. 1, Doc. B. On October 19, 1995, the Department

². Dept. Group Ex. No. 1, which is the only source of documentary evidence in the present record, consists of the following: The Department's Determination dated October 19, 1995; the Application for Property Tax Exemption, received by the Illinois Department of Revenue on April 5, 1994; the Real Estate Exemption Complaint filed with the Cook County Board of (Tax) Appeals on January 6, 1994; an Affidavit of Use dated January 6, 1994; a contract for deed dated August 31, 1993; a rider and addendum to the aforementioned contract; a closing statement dated August 31, 1993; applicant's by-laws; a fund owner form pertaining to insurance on the subject property; real estate tax bills; a letter, dated February 22, 1988, under the signature of W.S. Winterode, District Director of the Internal Revenue Service; and a certificate, issued by the Illinois Department of Revenue on October 4, 1991, finding the applicant to be exempt from Use and related sales taxes in the State of Illinois.

All of the aforementioned exhibits have been included in the group exhibit. However, each individual document was not separately marked as a component part of same. Thus, in order to clarify any confusion that may result from referring to the group exhibit as an indivisible whole, its documents are hereby renamed as follows: Dept. Group Ex. No.1, Document (hereinafter "Doc.") A is the Real Estate Exemption Complaint; Dept. Group Ex. No. 1, Doc. B is the Application for Property Tax Exemption; Dept. Group Ex. No. 1, Doc. C is the Department's Determination dated October 19, 1995; Dept. Group Ex. No. 1, Doc. D is the Affidavit of Use; Dept. Group Ex. No. 1, Doc. E is the Contract for Deed; Dept. Group Ex. No. 1, Doc. F is the Rider to the aforementioned Contract; Dept. Ex. No. 1, Doc. G is the Addendum to the Contract for Deed; Dept. Group Ex. No. 1, Doc. H is the closing statement; Dept. Group Ex. No. 1, Doc. I is the Fund Owner Form; Dept. Group Ex. No. 1, Doc. J is applicant's Certificate of Incorporation; Dept. Group Ex. No. 1, Doc. K is applicant's by-laws; Dept. Group Ex. No. 1, Doc. L is the letter from the Internal Revenue Service dated February 22, 1988; Dept. Group Ex. No. 1, Doc. M is the certificate exempting applicant from Use and related sales taxes in the State of Illinois; and Dept. Group Ex. No. 1, Doc. N are the tax bills.

accepted this recommendation by issuing a certificate finding that the subject parcel was not in exempt use. (Dept. Group Ex. No. 1, Doc. C).

Applicant later filed a timely appeal to the Department's denial and thereafter presented evidence at a formal administrative hearing that took place on July 31, 1996. Following submission of all evidence and a careful review of the record, it is recommended that the subject parcel not be exempt from 1993 real estate taxes.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein are established by the admission into evidence of Dept. Group Ex. No. 1 Docs. A, B and C.

2. The subject parcel is located at 8521 - 23 South Commercial Avenue, Chicago, IL 60617. The entire lot measures 50 x 120 square feet and is improved with a 6,000 square foot building. Dept. Group. Ex. No. 1, Doc. C.

3. The building consists of a large lower level (or first floor) which features an auditorium and a smaller second floor that contains an office and two storage areas. *Id.*

4. Applicant entered into a contract for deed, in which it agreed to purchase the subject parcel for \$88,000.00, on August 31, 1993. Said contract, and the rider attached thereto, provided *inter alia* that:

A. Applicant would pay \$1,000.00 as earnest money to be applied to the purchase price;

B. KMG would pay an additional \$13,000.00 toward the purchase price at the time of closing;

C. The remaining balance on the purchase price (\$74,000.00) was to be paid in equal monthly installments of \$728.71 plus yearly interest at the rate of 8.5%;

D. Applicant was liable for a pro-rated share of the 1993 real estate taxes;

E. KMG was also liable for 100% of the real estate taxes levied in subsequent assessment years.

Dept. Group Ex. No. 1, Docs F and G.

5. Applicant closed on the subject property August 31, 1993. Dept. Group Ex. No. 1, Doc. H; Tr. p. 12.

6. KMG was incorporated under the General Not For Profit Corporation Act of Illinois on November 20, 1985. Its by-laws indicate that "[t]he purposes for which the corporation is organized shall be limited exclusively to charitable, literary or educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code ... [or any successor provision thereto]." Dept. Group Ex. No. 1, Doc. J, K.

7. Applicant's by-laws also indicate, *inter alia*, that its specific corporate purposes include the following:

A. Receiving and administering funds exclusively for charitable, literary or educational purposes;

B. Organizing, sponsoring and presenting programs for featuring [sic] dance and other cultural arts;

C. Organizing and operating education programs and classes to teach young people, regardless of their race, dance and other cultural arts;

D. To make contributions from its funds to other corporations, trusts, funds, foundations or other organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1954 or any successor provision thereto;

E. To provide for a waiver or reduction of any entrance fee or other tuition cost for an individual seeking to join an offered educational class [sic] or social program, based upon the individual's ability to pay.

Dept. Group Ex. No. 1, Doc. K.

7. The Internal Revenue Service determined that KMG was exempt from federal income tax on February 22, 1988. This determination of exempt status was granted pursuant Section 501(c)(3) of the Internal Revenue Code and based on the Service's conclusion that applicant qualified as an organization described in Section 509(a)(2) of that statute. Dept. Group Ex. No. 1, Doc. L.

8. On October 4, 1991, the Department determined that applicant was "organized and operated exclusively for charitable purposes," and therefore exempt from Use and related sales taxes in the State of Illinois. Dept. Group Ex. No. 1, Doc. M.

9. Applicant uses the subject property to offer performing arts classes. Most of the classes, which include ballet, tap dance, jazz dance and tumbling, are held on Saturday. However, applicant also offers a limited number of classes on Tuesday nights and runs some rehearsals on Thursdays. Tr. p. 8.

10. Applicant charges each student a tuition fee of \$35.00 per month. It averages approximately 65 to 75 students per year and derives most of its income from tuition charges. Tr. pp. 9, 10, 12.

CONCLUSIONS OF LAW:

On examination of the record established this applicant has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject parcel from 1993 real estate taxes. Accordingly, under the reasoning given below, the Department's determination that said parcel does not satisfy the requirements set forth in 35 ILCS 205/19.7 should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112

Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Revenue Act of 1939, 35 **ILCS** 205/1 et seq. The provisions of that statute which govern disposition of the present matter are found in 35 **ILCS** 205/19.7. In relevant part, that provision states as follows:

All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States [is exempt from real estate taxation] ... when such property is actually and exclusively used for such charitable or beneficent purposes and not leased or otherwise used with a view to profit ...[.]

Here, the appropriate exemption pertains to "institutions of public charity."³ Illinois courts have long refused to apply this exemption absent suitable evidence that the property in question is owned by an "institution of public charity" and "exclusively used" for purposes which qualify as "charitable" within the meaning of Illinois law. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968). (hereinafter "Korzen").

With respect to the ownership issue, I take administrative notice of the holding in Christian Action Ministries v. Department of Local Government Affairs, 56 Ill. App.3d 102 (1st Dist. 1977), (hereinafter "CAM"). There, appellant's

³. The transcript contains many references to "classes" and other educational activity. However, applicant limited its presentation and evidence to the charitable issue. It also did not submit any curriculum establishing that it is a "school" within the meaning of 35 **ILCS** 205/19.1. Thus, I shall deem that issue waived and limit the scope of this Recommendation to the charitable exemption.

contract for deed required that it produce a sizeable down payment, make substantial monthly payments and incur liability for property taxes. The court found that these requirements vested appellant with "a substantial monetary interest in the property" and therefore expressly rejected the Department's contention that the applicable version of Section 19.7⁴ contained an "explicit statutory requirement of title ownership." CAM at 105.

This applicant's contract for deed obligates it to assume fiscal responsibilities that, (except for the exact monetary amount involved), are identical to those of the appellant in CAM. Accordingly, I conclude that this contract vested applicant with ownership of the subject parcel as of August 31, 1993. However, for the following reasons, I further conclude that applicant has failed to prove that it is an "institution of public charity" within the meaning of Section 205/19.7 and that it used the subject parcel for exempt purposes during the 34% of 1993 which fell subsequent to the date on which applicant acquired its ownership interest.

In Korzen, *supra*, the Illinois Supreme Court established the now well-settled guidelines for determining "charitable" status under Section 205/19.7 and its predecessor provisions. These standards begin with the following definition of "charity," which the court used to analyze whether appellant's senior citizen's home was exempt from property taxes under the Revenue Act of 1939:

... a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

39 Ill.2d at 157 (citing Crerar v. Williams, 145 Ill. 625 (1893)).

The Korzen court also observed that the following "distinctive characteristics" are common to all charitable institutions:

- 1) they have no capital stock or shareholders;

⁴. CAM was decided under the exemption provisions contained in Ill. Rev. Stat. 1975, ch. 120, par. 500.7.

2) they earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;

3) they dispense charity to all who need and apply for it;

4) they do not provide gain or profit in a private sense to any person connected with it; and,

5) they do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses.

Id.

This applicant's primary obstacle to exemption under the above criteria is lack of proof. For example, it did not submit any financial statements establishing the sources of its revenues or its expenditures. While such statements are not required, it is difficult for me to determine if applicant in fact satisfies the second criteria articulated in Korzen without them.

Despite this, it bears noting that applicant's sole witness, Rasheda Gaither, testified that most of KMG's revenue comes from the tuition it charges its students. (Tr. p. 10). Given that this revenue is generated from arm's length business transactions rather than sources specified in Korzen, it does not appear that applicant's financial structure conforms to that of an "institution of public charity."

Notwithstanding the above, I would note that Ms. Gaither's testimony is marred by a series of conclusory statements which, in and of themselves, do not establish charitable status or exempt use. For instance, Ms. Gaither testified that "the property in question is used by a charitable organization that is based on providing and exposing children to the performing arts." (Tr. p. 5).

This statement could be taken to establish that applicant's *purpose* satisfies the above-stated definition of "charity." However, such purpose is but one element of a more complex and multi-faceted burden of proof that applicant

must sustain. Moreover, Ms. Gaither's statement assumes that applicant in fact qualifies as an "institution of public charity" and in fact uses the subject parcel for exempt purposes. These facts, which must be proven by clear and convincing evidence establishing conformity with the above criteria, are necessary components of applicant's burden of proof. Therefore, applicant's attempt to establish them through Ms. Gaither's conclusory testimony fails.

Ms. Gaither further testified that applicant sponsors children and awards scholarships. (Tr. p. 6 - 7). This testimony could establish that applicant "dispense[s] charity to all who need and apply for it" as required by Korzen. Nevertheless, this testimony is conclusory in the sense that it does not indicate *how many*, if any, students applicant actually sponsored in 1993 or the exact number of scholarships it awarded during that year. Absent such evidence, or corroborating financial statements, I am unable to discern the exact extent of applicant's charitable use. Thus, while scholarships and the like might have made it possible for *some* students to attend KMG, the conclusory nature of applicant's evidence bars me from finding that the subject parcel was in fact "... actually and *exclusively*⁵ used for ... charitable or beneficent purposes ..." during 1993.⁶

Through her testimony, Ms. Gaither also attempted to establish that applicant's program removed a burden from the State by providing children with a safe alternative to drugs, gangs and other social ills. (Tr. pp. 7 - 8). She further testified that applicant sponsors and trains children who are wards of

⁵. In making this conclusion, it must be remembered that the word "exclusively," when used in Section 205/19.7 and other tax exemption statutes, means "the primary purpose for which property is used and not any secondary or incidental purpose." Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993).

⁶. For specific information as to how lack of appropriate fee arrangements can defeat charitable status, see, Small v. Pangle, 60 Ill. 2d 510, 518 (1975); Du Page County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 471 (2nd Dist. 1995).

the State. However, she did not produce any contracts or other evidence establishing what relationship, if any, applicant has with the State or the terms (financial and otherwise) under which KMG provides such training. Without this evidence, I can not determine how many wards applicant trains or, more importantly, if it undertakes same pursuant to contractual obligation or its own election.

Assuming, arguendo, that applicant's evidence established the former, KMG would (in essence) be arguing that it relieves the State of a burden *merely* by doing business with the State of Illinois. Our courts have recognized the necessity for avoiding such a situation by requiring that applicant's activities benefit the general public as a whole rather than a limited class of persons, such as the one that might benefit from any contract applicant may have had with the State.⁷ Thus, it does not appear that KMG could have satisfied the "public benefit" requirement even if it had established that it had a contractual obligation to train wards of the State.

If applicant's evidence established that it provided such training at its own election, KMG would still be required to prove how many wards obtained training via its sponsorship. The present record does not contain that information or otherwise indicates how many wards applicant trained vis-a-vis its students that paid full tuition. In the absence of this information, the preceding analysis demonstrates that applicant has failed to sustain yet another aspect of its burden of proof. Thus, while applicant's efforts are certainly laudable and worthwhile, KMG has not proven that they qualify as "charitable" within the meaning of Illinois law.

7. For additional analysis of the public benefit requirement and its underlying rationale, see, People ex. rel. Brenza v. Turnverein Lincolon, 8 Ill.2d 188, 202-203 (1956); Yale Club of Chicago v. Department of Revenue, 214 Ill. App.3d 468 (1st Dist. 1991); DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App.3d 461 (2nd Dist. 1995). For further analysis as to how this and other requirements are used to determine charitable status (or lack thereof), see, Korzen, *supra*.

Neither applicant's organizational documents nor its exemptions from other non-related taxes alter the preceding conclusions. Its exemptions from federal income and State use taxes, in and of themselves or in combination with other factors, do not establish the requisite exempt use. Thus, they are not dispositive of the present inquiry, which is whether the subject parcel is entitled to exemption from 1993 real estate taxes under Section 205/19.7. People ex rel County Collector v. Hopedale Medical Foundation, 46 Ill.2d 450 (1970).

Furthermore, applicant's exemption from federal income tax establishes only that KMG is an exempt organization for purposes of the relevant Sections of the Internal Revenue Code. However, these Sections neither preempt Section 205/19.7 nor cure any of the aforementioned evidentiary deficiencies. As such, they do not establish that KMG qualifies as an "institution of public charity" within the meaning of Section 205/19.7 or that it used the subject parcel for exempt purposes during 1993.

With respect to applicant's organizational documents, I take administrative notice of the well-settled principle that "statements of the agents of an institution and the wording of its governing documents evidencing an intention to [engage in exclusively charitable activity] do not relieve such an institution of the burden of proving that ... [it] actually and factually [engages in such activity]." Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987). Therefore, "it is necessary to analyze the activities of the [applicant] in order to determine whether it is a charitable organization as it purports to be in its charter." *Id.*

Much of the preceding analysis has focused on multiple failures of proof, the totality of which cause me to conclude that the subject parcel should not be exempt from 1993 real estate taxes. The foregoing principles do not cure these failures of proof. Nor do they alleviate the need for affirmative evidence of applicant's actual operations and exempt use. For these reasons, and because inability to afford property tax increases (Tr. p. 13) does not constitute

legally sufficient grounds for granting an exemption, the Department's decision denying same should be affirmed.

WHEREFORE, for all the above-stated reasons, it is my recommendation that Cook County Parcel Index Numbers 21-31-420-006 and 21-31-420-007 not be exempt from real estate taxes for the 1993 assessment year.

Date

Alan I. Marcus,
Administrative Law Judge